

6-17-04
#51

**APPEAL OF PLANNING COMMISSION DECISION
OF A COMPATIBILITY WAIVER**

CASE NUMBER: SPC-03-0023W **PLANNING COMMISSION DATE:** 4-13-2004

ADDRESS: 1106 W. 6th Street, Unit 301

WATERSHED: Town Lake (Urban)

AREA: Condo unit

EXISTING ZONING: CS-MU-CO-NP

PROJECT NAME: Encinal Condominiums, unit 301

PROPOSED USE: Condominium

AGENT: Melton West
1106 W. 6th Street, Unit 301
Austin, TX 78703
(512) 478-8400

APPLICANT: Jesse and Barbara West
1106 W. 6th St., Unit 301
Austin, TX 78703

NEIGHBORHOOD ORGANIZATION:

Old West Austin Neighborhood Association
Austin Neighborhoods Council
West End Austin Alliance

APPLICABLE WATERSHED ORDINANCE: Current/ Comprehensive watershed ordinance

CAPITOL VIEW: Not in View Corridor

SUMMARY STAFF RECOMMENDATION: Recommended

PLANNING COMMISSION ACTION: 4-13-2004, Denied 5-2, w/ 2 abstentions

CASE MANAGER: Lynda Courtney, 974-2830

PROJECT INFORMATION:

EXIST. ZONING: CS-MU-CO-NP

MAX. IMPERV. CVRG.: 95%

REQUIRED PARKING: N/A

PROPOSED & EXIST. IMP. CVRG.: N/C

PROVIDED PARKING: N/A

EXIST. USE: Condominium residential unit

PROPOSED USE: Same

SURROUNDING CONDITIONS:

Zoning/ Land use

North: Alley, then SF-3 H-NP, Single family historic homes

East: CS-MU-CO-NP, Office use

South: West 6th Street, then CS-H-NP, Art gallery retail

West: CS-MU-CO-NP, Retail

SUMMARY COMMENTS ON SITE PLAN:

The applicant requests a waiver of compatibility height requirements in order to complete construction of an additional story to his condo unit.

Mr. West began construction of a 4th or 5th story to the 4-story condominium building in which his unit is located and was red-tagged to stop construction. Due to the proximity of the single family property to the north, the allowable height limit for a structure more than 50' but less than 100' from a single family property is limited to 40' or three stories. The construction is located 98.5' from the single-family property to the north. Mr. West is proposing a height of 42.8* feet, and four stories, based on the limitations set forth in LDC section 25-2-1081. There is an intervening existing structure located between the proposed addition to Mr. West's condo and the single family property. The height of the intervening building is 44.5'* measured from the ground adjacent to the building. The roof level of that structure is actually 9' above the roof of Mr. West's proposed structure due to the higher grade at which the building was built.

*On May 10, 2004, representatives of the City of Austin Watershed and Development Review Department walked the site with Mr. West and pinpointed the specific points from which the measurements for building height should be taken. Due to the topographic challenges of the site and the architectural design of the buildings, it was discussed and decided where the highest and lowest grades adjacent to the buildings were and Mr. West marked those points of reference. A subsequent survey based on those points showed slightly altered legal building heights for zoning, as defined by the Land Development Code 25-1-21 (46).

Mr. West is also asking for the standard exceptions to height, as specified in LDC 25-2-531, in order to have a pergola/trellis on the roof for a roof garden. The exceptions allow for parapet walls, stairways, heating or cooling equipment, protective covers, etc. to exceed the zoning district height limit by 15%, or, in this case, 6' since the zoning height limitation, as controlled by compatibility, is 40'. The maximum height of the pergola would then be 48.8'.



City of Austin Watershed Protection and Development Review Department
505 Barton Springs Road / P.O. Box 1088 / Austin, Texas 78767-8835

SITE PLAN APPEAL

If you are an applicant and/or property owner or interested party, and you wish to appeal a decision on a site plan application, the following form must be completed and filed with the Director of Watershed Protection and Development Review Department, City of Austin, at the address shown above. The deadline to file an appeal is 14 days after the decision of the Planning Commission, or 20 days after an administrative decision by the Director. If you need assistance, please contact the assigned City contact at (512) 974-2680.

CASE NO. SPC-03-0023W

DATE APPEAL FILED April 21, 04

PROJECT NAME Encinal

YOUR NAME Melton West

PROJECT ADDRESS 106 W 6th #301
Austin TX 78703

SIGNATURE Melton West

YOUR ADDRESS 106 W 6th #301
Austin TX 78703

APPLICANT'S NAME Melton West

YOUR PHONE NO. () WORK

CITY CONTACT Lynda Courtney

() 478-8400 HOME

INTERESTED PARTY STATUS: Indicate how you qualify as an interested party who may file an appeal by the following criteria: (Check one)

- ☐ I am the record property owner of the subject property
- ☒ I am the applicant or agent representing the applicant
- ☐ I communicated my interest by speaking at the Planning Commission public hearing on (date) _____
- ☐ I communicated my interest in writing to the Director or Planning Commission prior to the decision (attach copy of dated correspondence).

In addition to the above criteria, I qualify as an interested party by one of the following criteria: (Check one)

- ☒ I occupy as my primary residence a dwelling located within 500 feet of the subject site.
- ☐ I am the record owner of property within 500 feet of the subject site.
- ☐ I am an officer of a neighborhood or environmental organization whose declared boundaries are within 500 feet of the subject site.

DECISION TO BE APPEALED*: (Check one)

- ☐ Administrative Disapproval/Interpretation of a Site Plan
- ☐ Replacement site plan
- ☐ Planning Commission Approval/Disapproval of a Site Plan
- ☒ Waiver or Extension
- ☐ Planned Unit Development (PUD) Revision
- ☐ Other: _____

Date of Decision: _____

Date of Decision: _____

Date of Decision: _____

Date of Decision: April 19

Date of Decision: _____

Date of Decision: _____

*Administrative Approval/Disapproval of a Site Plan may only be appealed by the Applicant.

STATEMENT: Please provide a statement specifying the reason(s) you believe the decision under appeal does not comply with applicable requirements of the Land Development Code:

As per section 25-2-1081, this project meets the criteria for a waiver and granting one is appropriate.

(Attach additional page if necessary.)

Applicable Code Section: 25-2-1081

ENCINAL CONDOS - COMPATIBILITY HEIGHT WAIVER
1106 West 6th Street, Unit 301

To the Mayor and Members of the City Council:

We are appealing the Planning Commission's decision to deny a waiver from height limitations specified in Section § 25-2-1063: Compatibility Standards of the Austin's Land Development Code.

It is our contention that a height waiver is entirely appropriate for this project, and that this project is also wholly within the bounds of Section § 25-2-1081: Planning Commission or Council Waiver.

This portion of City code recognizes that the imposition of compatibility standards is unwarranted *if*:

- (a) "...there is an existing structure located between the proposed structure and the closest property to the proposed structure that triggers the compatibility standards"; and
- (b) The proposed construction does not "exceed the height of the existing structure."

Moreover, a waiver is allowable *if*:

- (c) The "waiver is appropriate and will not harm the surrounding area."

Compatibility standards limits height to three stories and 40 feet. First, we are requesting that the three-story limitation be waived, since our building and the intervening structure have both been four stories for over 24 years. Second, we are requesting that the 40-foot limitation be waived since the existing intervening building is higher. Our proposed height is well within our base zoning (CS-MU-CO-NP) height limit of 60 feet.

Unfortunately, the Planning Commission was unsure if our proposed height met criteria (b) since neighbors questioned the grade points we used in calculating height. To alleviate these questions, we asked City zoning staff to make a site visit to determine the exact points we should measure. With their guidance, we resurveyed, revised our calculations, and made adjustments to our building plans.

City zoning staff has reviewed our updated materials and confirmed that our proposed structure indeed meets criteria (a) and (b) above. The attached West Elevation plan view illustrates:

1. The height of the proposed structure (43.8'),
2. The height of the existing intervening structure (44.5'), and
3. The distance from the proposed structure to the SF3-H property triggering compatibility (98.5').

As shown, the existing intervening structure is across the alley from the SF3-H property. Our proposed structure has a lower building height by zoning calculations and is 9' lower in absolute elevation since our condominiums are on a hill. The hill and the intervening structure make it difficult to see the proposed structure at all from the property triggering compatibility. Thus, our proposed structure will have negligible impact on it

We also wish to acknowledge that the views of a few of our neighbors will be affected primarily during the winter months, and we sincerely regret this. However, our building is not in a view corridor and we have been advised by City zoning staff that the City's compatibility standards are intended, among other things, to insure **appropriate scale and clustering of buildings** and not to protect views. To this end, we have also attached photographs that show that our structure is **clearly in scale** with the surrounding area.

In fact, the photographs reveal a variety of other buildings of greater size, height, and/or elevation in comparison with the proposed structure. These photographs also show that, not only does the proposed structure *not* harm the surrounding area, but in fact melds easily into it, being effectually buffered by existing surrounding buildings and trees. Consequentially, our project readily fulfills requirement (c), described above.

And, in addition, we believe that our structure is thoroughly in agreement with the OWANA neighborhood plan, which states:

"The goal of the Neighborhood Planning Team is to protect existing residential property and encourage the development of new residential property."

Our project rehabilitates one of the few existing residential properties on West 6th Street. It adds new residential living space without requiring additional impervious cover which will have zero environmental impact.

In summation, the intervening structure mitigates concerns that compatibility standards address. Our proposed height is compatible with the surrounding area and our project is in alignment with the neighborhood plan. A waiver is thereby appropriate, and we respectfully ask that you grant us one. We thank you for your consideration.

Sincerely,

Melton West

ENCINAL CONDOS - COMPATIBILITY HEIGHT WAIVER
1106 West 6th Street, Unit 301

Applicable Code Sections

§ 25-2-1063 HEIGHT LIMITATIONS AND SETBACKS FOR LARGE SITES.

- (A) This section applies to a site that has:
- (1) an area that exceeds 20,000 square feet; or
 - (2) a street frontage that exceeds 100 feet.
- (B) A person may not construct a structure 25 feet or less from property:
- (1) in an urban family residence (SF-5) or more restrictive zoning district; or
 - (2) on which a use permitted in an SF-5 or more restrictive zoning district is located.
- (C) A person may not construct a structure that exceeds a height of:
- (1) two stories or 30 feet if the structure is 50 feet or less from property:
 - (a) in an SF-5 or more restrictive zoning district; or
 - (b) on which a use permitted in an SF-5 or more restrictive zoning district is located; or
 - (2) three stories or 40 feet if the structure is more than 50 feet and not more than 100 feet from property:
 - (a) in an SF-5 or more restrictive zoning district; or
 - (b) on which a use permitted in an SF-5 or more restrictive zoning district is located;
 - (3) for a structure more than 100 feet but not more than 300 feet from property zoned SF-5 or more restrictive, 40 feet plus one foot for each 10 feet of distance in excess of 100 feet from the property zoned SF-5 or more restrictive; or
 - (4) for a structure more than 300 feet but not more than 540 feet from property zoned SF-5 or more restrictive, 60 feet plus one foot for each four feet of distance in excess of 300 feet from the property zoned SF-5 or more restrictive.

§ 25-2-1081 PLANNING COMMISSION OR COUNCIL WAIVER

- (A) Except as provided by Subsections (B) and (C), the Land Use Commission, or Council on appeal from a Land Use Commission decision, may waive a requirement of this article if the Land Use Commission or Council determine that a waiver is appropriate and will not harm the surrounding area.
- (B) The Land Use Commission or Council may not approve a waiver that reduces a required setback to less than five feet.
- (C) The Land Use Commission or the Council may approve a waiver of a height restriction imposed by Section 25-2-1062 (Height Limitations And Setbacks For Small Sites) and 25-2-1063 (Height Limitations And Setbacks For Large Sites) only if:
- (1) there is an existing structure located between the proposed structure and the closest property to the proposed structure that triggers the compatibility standards; or
 - (2) the proposed development is located on and completely surrounded by property in a downtown mixed use (DMU) zoning district and the person applying for the waiver has:
 - (a) provided notice of the requested waiver, by certified mail with return receipt requested, to the owner of each property that adjoins or is across the street from the proposed development and on which a use permitted in an urban residence (SF-5) or more restrictive zoning district is located; and
 - (b) submitted the return receipts to the director.
- (D) A waiver approved under Subsection (C)(1) may not permit the construction of a structure that exceeds the height of the existing structure.
- (E) This section does not prohibit the Board of Zoning Adjustment from granting a variance from a requirement of this article under Section 25-2-473 (Variance Requirements).

April 21, 2004

Melton West
1106 W. 6th St. #301
Austin, Texas 78703

City Austin WPDR
P.O. Box 1088
Austin, TX 78767

RE: Request to Appeal of Planning Commission decision.


TO: Joe Pantalione, Director

This is a formal request to appeal the Planning Commission's denial to grant our compatibility height waiver. In our request, we asked that 1) the 40 foot height limit be waived to allow us to finish construction at a height of 44.5 feet and 2) that the 3 story limit be waived so that we may restore the building to a 4 story structure. We believe that our request for a waiver should have been granted as the case clearly meets City of Austin Land Development Code requirements outlined in section 25-2-1081.

Our case (#SPC-03-0023W) was heard on April 13, 2004 in regards to our condominium located at 1106 W. 6th Street which is owned by Jesse and Barbara West. Our request for an appeal is allowed under section 25-2-1081 and our request is in accordance with Article 7, Division 1: Appeals.

Please schedule our appeal for the next available City Council meeting.

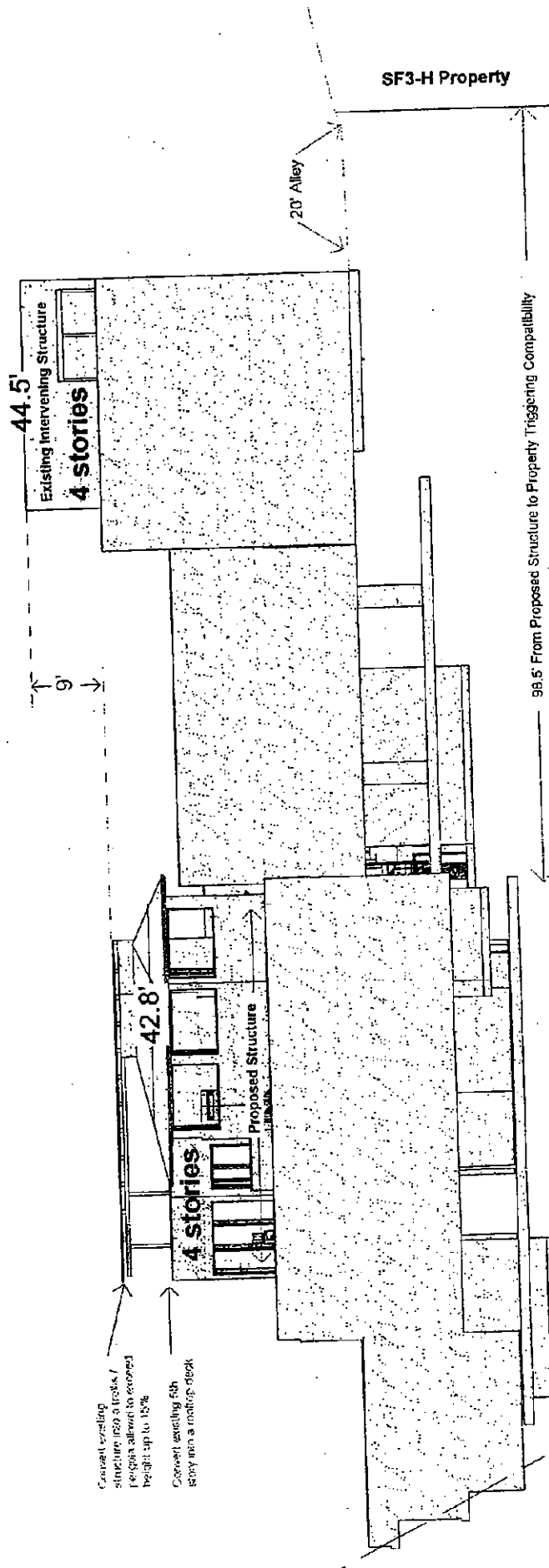
Sincerely,

A handwritten signature in cursive script, appearing to read "Melton West".

Melton West - Agent

Encinal Condominiums - 1106 West Sixth Street-

WEST ELEVATIONS

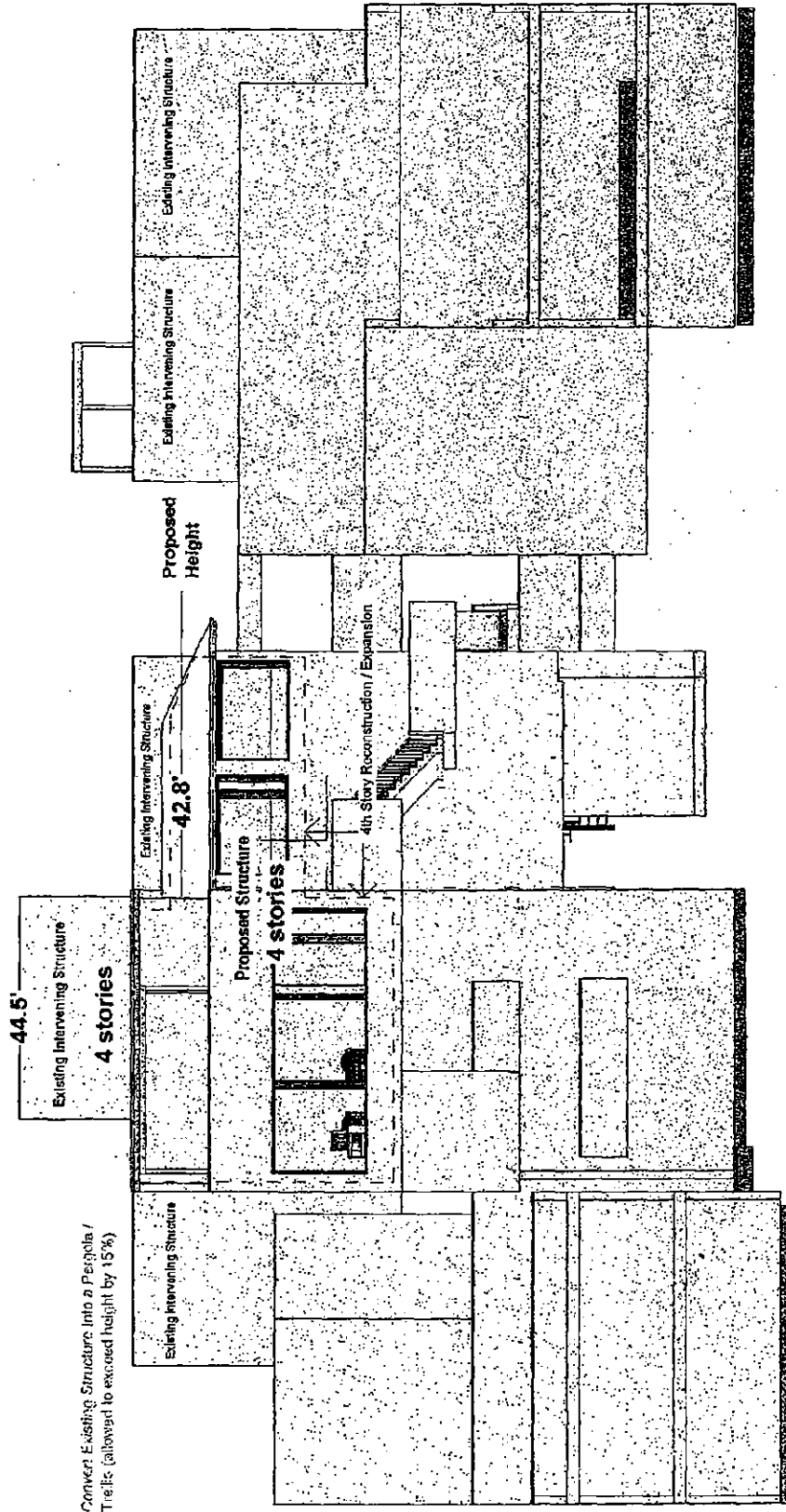


- 1 The proposed structure and the existing intervening structure have both been 4 stories for 24 years but a waiver is needed to allow the 4th story to be rebuilt and enlarged.
- 2 The existing intervening structure is 44.5' high and 9' higher than the proposed structure since it is on a hill but a waiver is needed to allow the proposed structure to be finished out at 42.8' high.

CS-MU-CO-NP base zoning allows 60 feet maximum height but compatibility standards limits height to 3 stories and 40 feet.

Encinal Condominiums - 1106 West Sixth Street

NORTH ELEVATIONS



Convert Existing Structure into a Pergola /
Trellis (allowing to exceed height by 15%)

Surveyed Elevations of the Proposed Structure:

Lowest Grade Point=497.1'
Highest Grade Point=508.1'
Building Height=545.4'

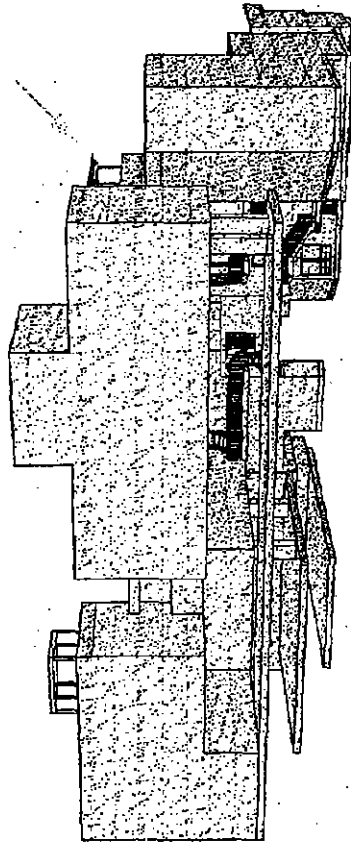
Building heights were measured from average
grade as zoning requires. Average grade was
determined from grade points selected by City
zoning staff and surveyed on May 27, 2004.

Surveyed Elevations of the Intervening Structure

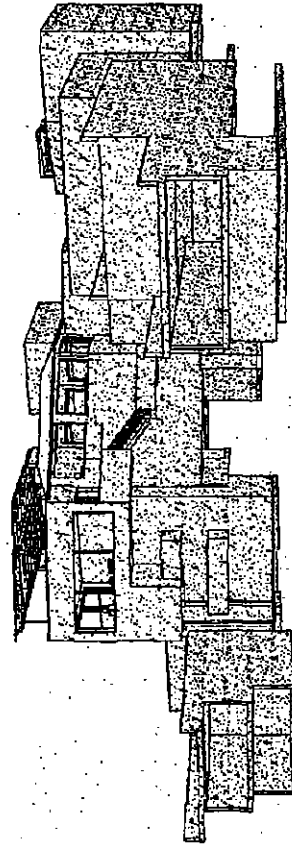
Lowest Grade Point=512.4'
Highest Grade Point=517.7'
Building Height=559.5'

Encinal Condominiums Unit 301

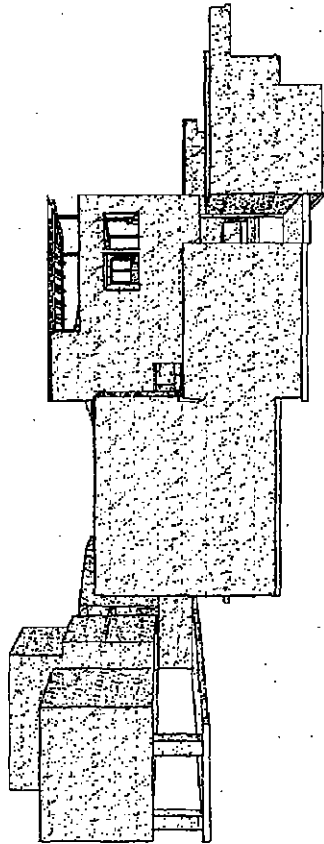
Extent of 4th Story Reconstruction / Expansion



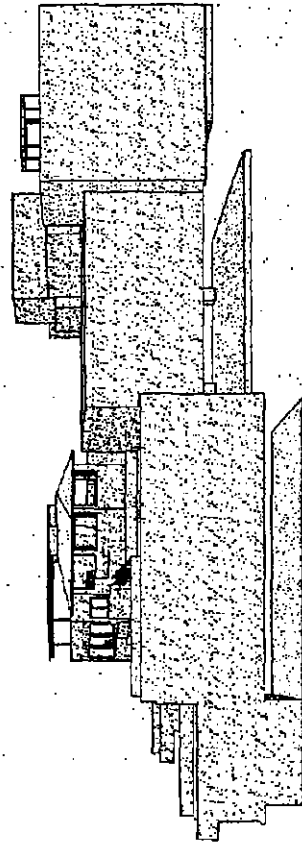
Facing West



Facing West

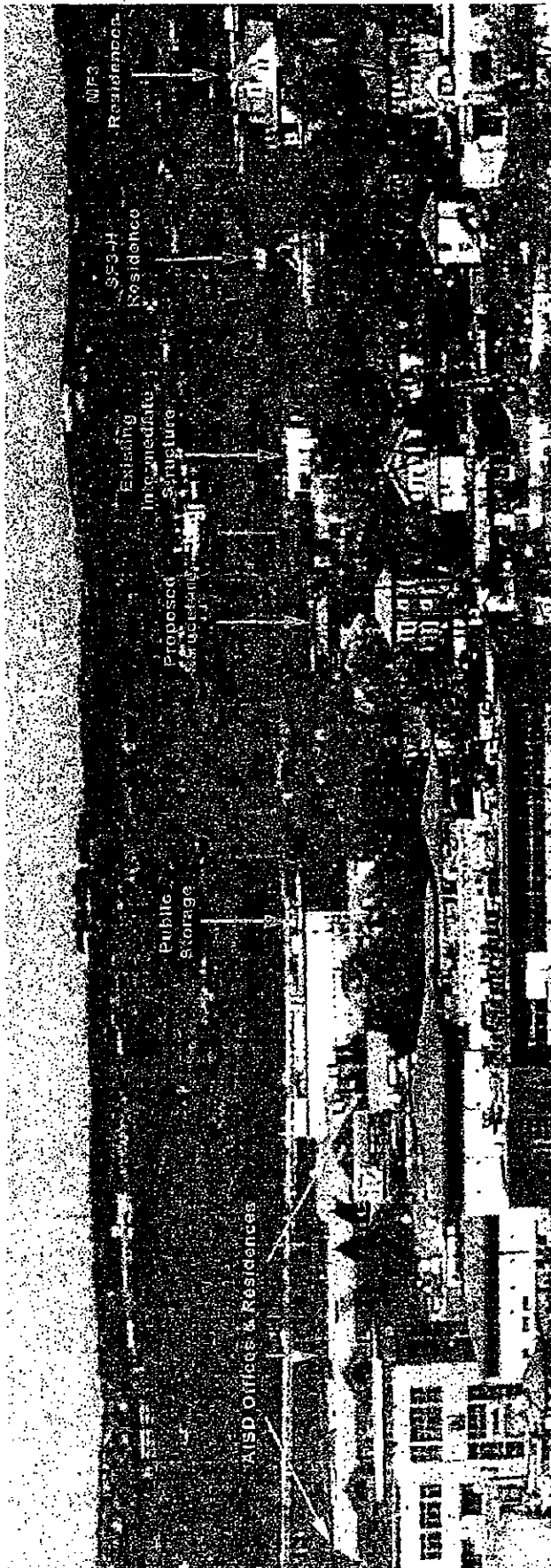


Facing East



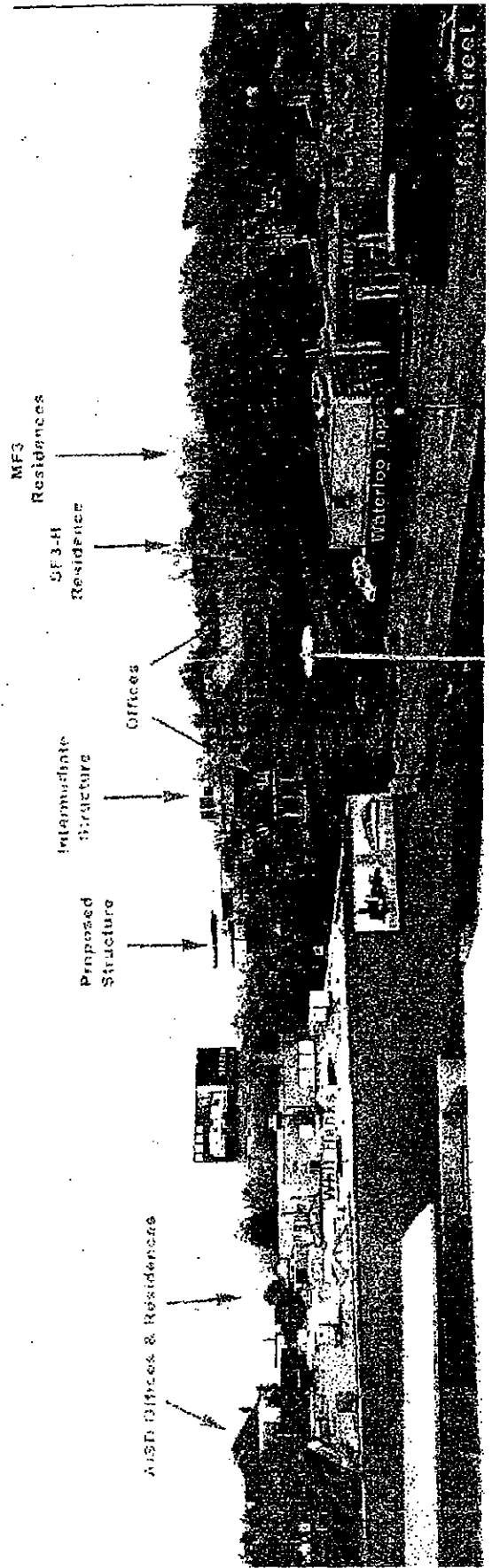
Facing West

COMPATIBILITY HEIGHT WAIVER ENCINAL CONDOMINIUMS - 1108 W. 6th St, Unit 304

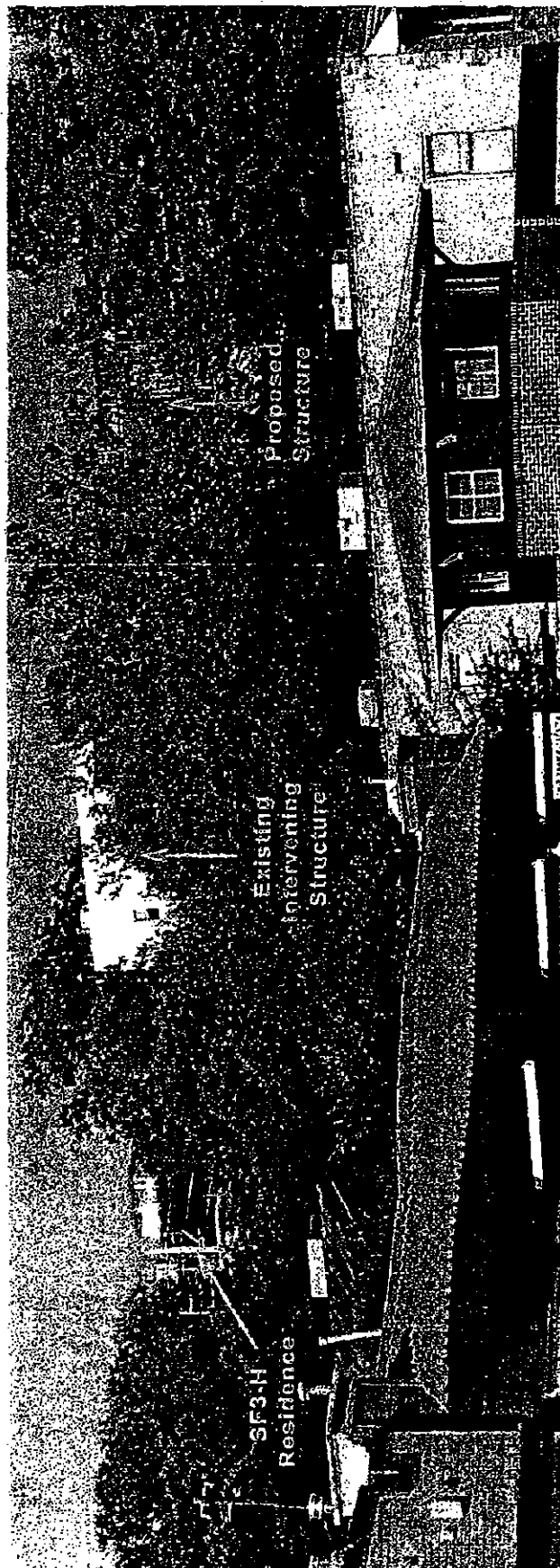


Winter photographs show the proposed structure that is typically hidden by trees.

Height of the proposed structure is appropriate for its location, which has many nearby buildings that are taller in elevation and/or higher from average grade.



COMPATIBILITY HEIGHT WAIVER
ENCINAL CONDOMINIUMS - 1102 W. 8th St. Unit 301



The proposed structure melds with the surrounding area especially since shade trees obscure it nine months out of 12.

COMPATIBILITY HEIGHT WAIVER
ENCINAL CONDOMINIUMS - 1106 W. 8th St, Unit 367

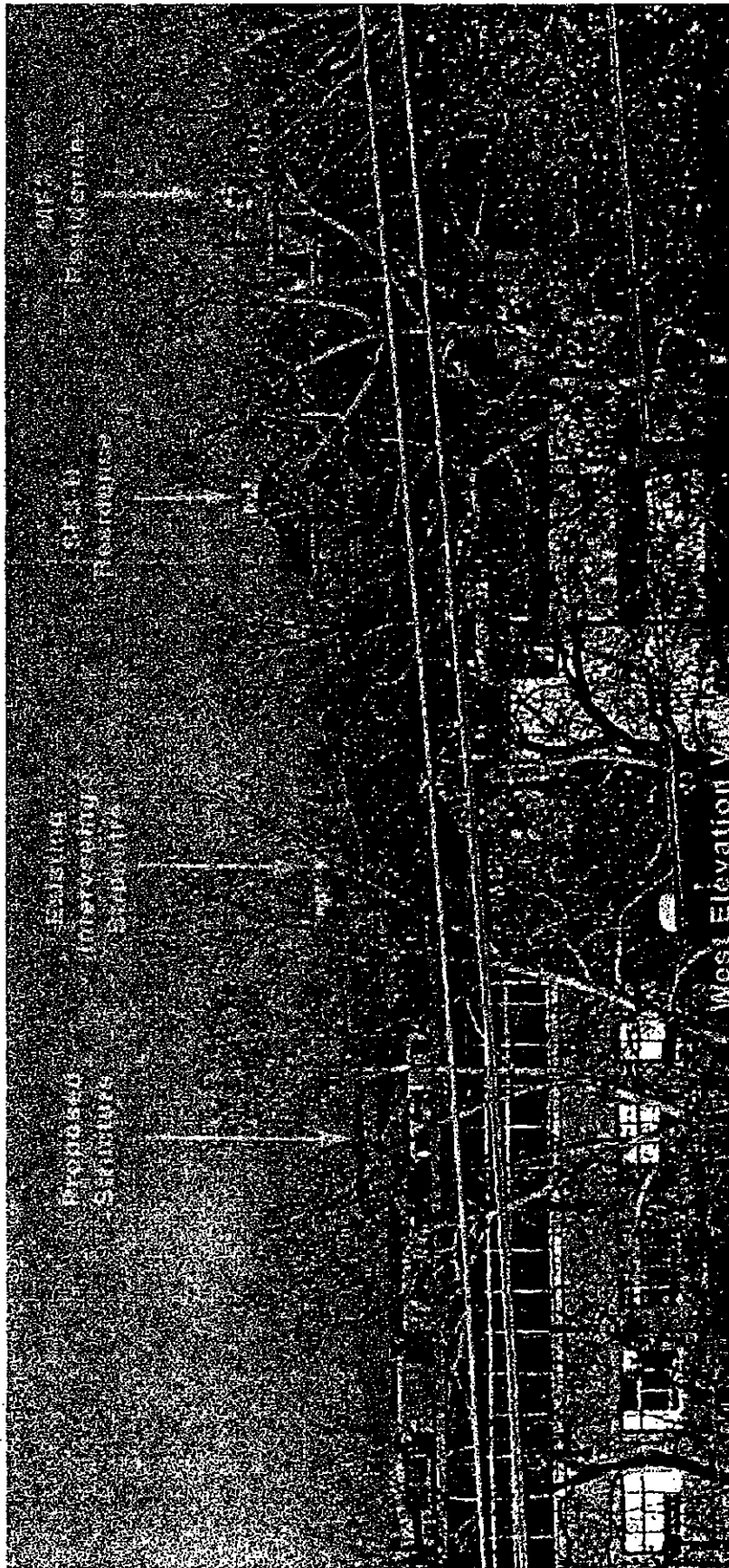


Taken from Blanco Street facing east

Compared with the recently built Gardens Condominiums, the proposed structure is:

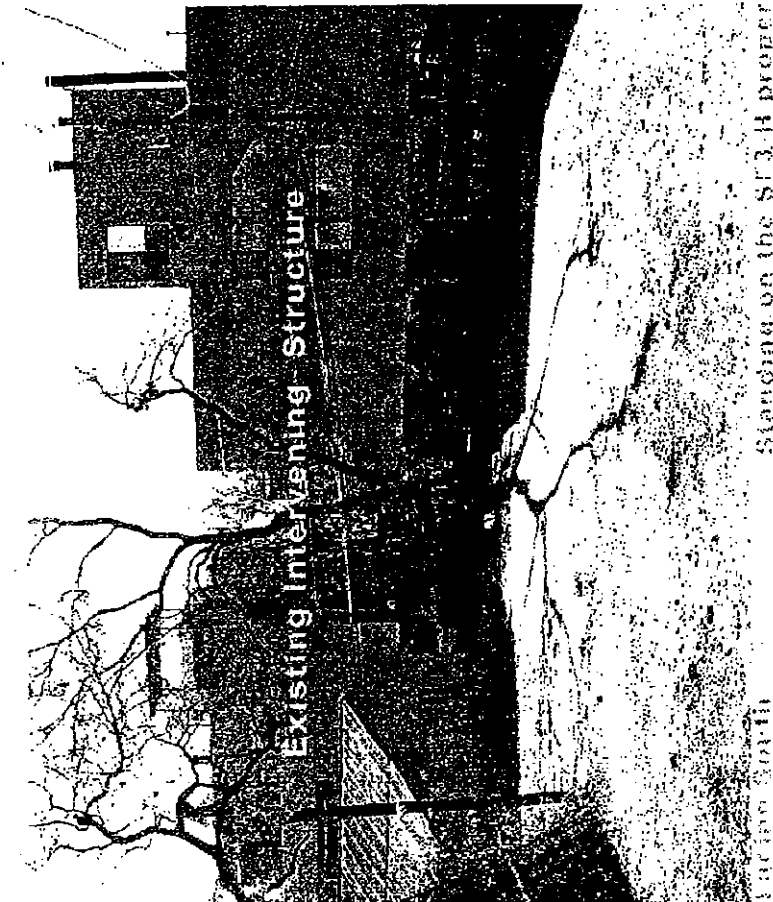
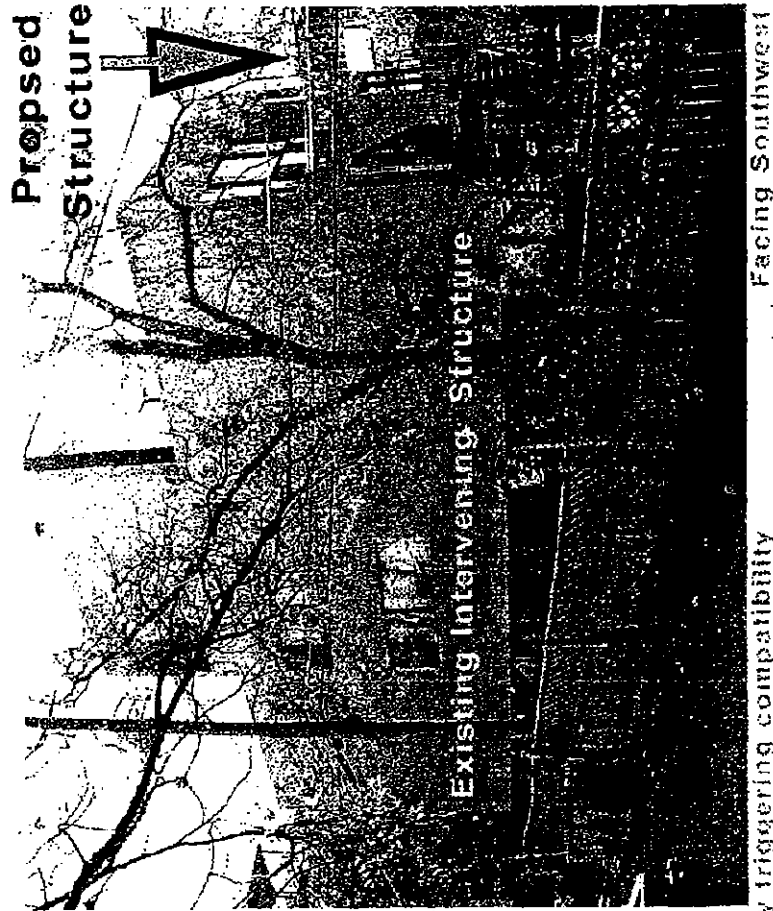
- (1) lower in elevation, (2) lower in building height from average grade, (3) smaller in mass, (4) further away from properties triggering compatibility, (5) buffered by more trees, (6) buffered by intervening buildings, (7) located in an OWANA-designated commercial area (vs. Gardens being located in the residential core).

COMPATIBILITY HEIGHT WAIVER
ENCINAL CONDOMINIUMS - 1405 W. 6th St, Unit 301



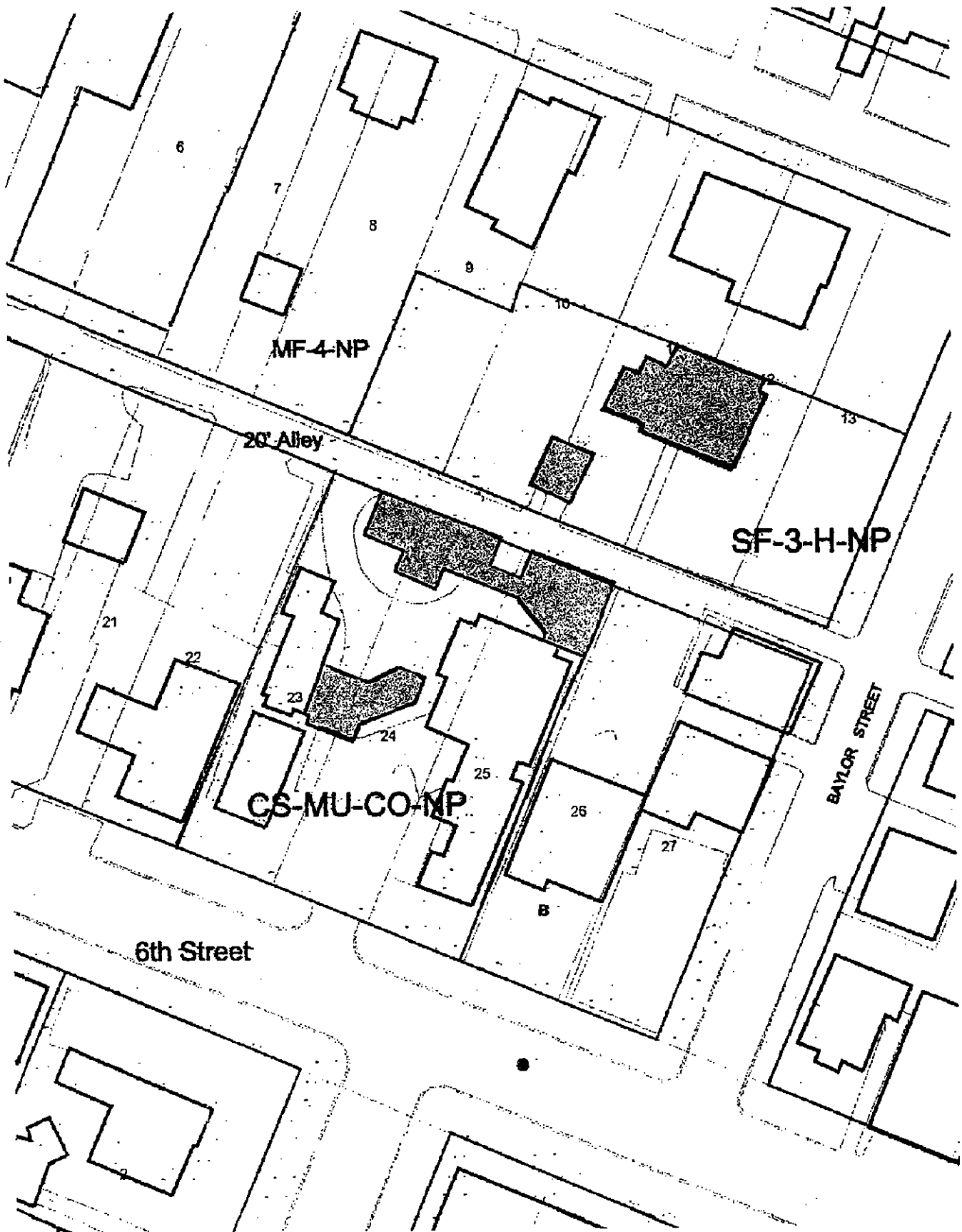
Height of proposed residential structure is in scale with neighboring residences and has virtually zero impact on them.

COMPATIBILITY HEIGHT WAIVER ENCINAL CONDOMINIUMS - 1105 W. 6th St, Unit 301



The proposed structure will have little effect on the property triggering compatibility, since it is behind a taller existing building. In this situation, City code would recognize that compatibility standards are unwarranted and allow them to be waived.

COMPATIBILITY HEIGHT WAIVER
ENCINAL CONDOMINIUMS - 1106 W. 6th ST Unit 301



Base Zoning



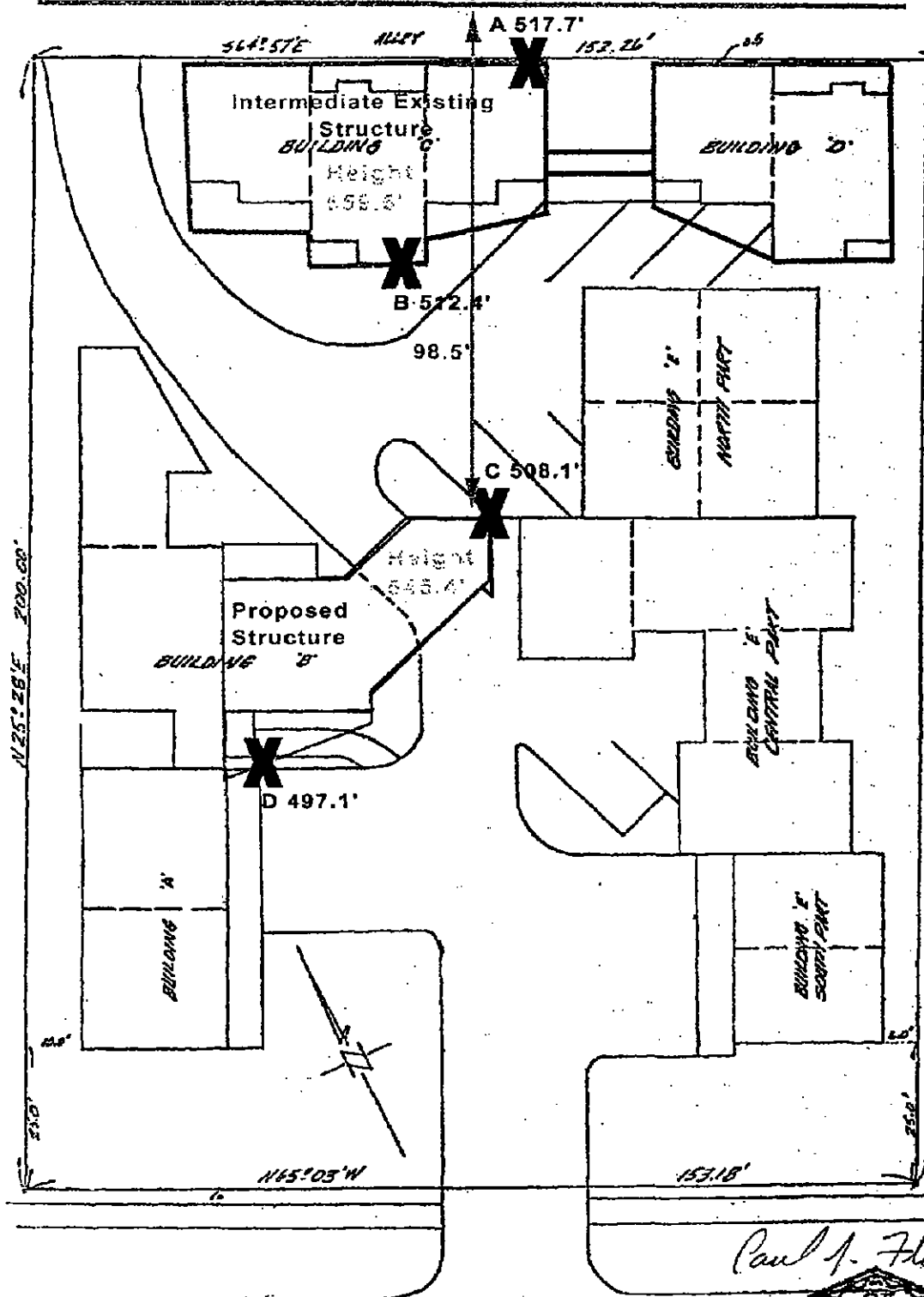
Land Use



COMPATIBILITY HEIGHT WAIVER
ENCINAL CONDOMINIUMS - 1955 W. 8TH ST. UCR 301



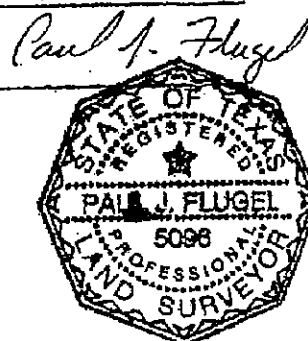
SF-3H Property



Survey of Building Heights and Grade Point Elevations.

Grade points A, B, & D are next to columns.
 Grade point C is parking area next to the building.
 Height of proposed structure is average height of gable roof.
 Reference point elevation is Unit 105 finished floor (498.86')
 as surveyed by James Lindsey in 1979 for condominium declaration.

May 27, 2004





January 6, 2004

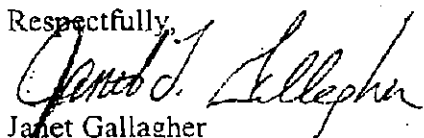
Mr. Melton West
1106 W 6th Street, Unit 301
Austin, TX 78703

Dear Mr. West:

This letter is to reiterate the discussion and general agreement reached in December meetings regarding the acceptable resolution of the illegal construction at Encinal Condominiums, Unit 301. The construction was performed without appropriate permits and without building code review. The construction also exceeded the allowable height permitted through Compatibility standards. To resolve these issues, Mr. West must:

1. Obtain a Planning Commission waiver of Compatibility height standards, according to the allowances and limitations in the Land Development Code section 25-2-1081;
2. Remove the 5th floor, such that no portion of the building exceeds 4 stories;
3. Install an NFPA 13-R residential sprinkler system in all parts of the condo unit, both new and existing.
4. Obtain a new building permit will be required for the work necessary to satisfy the building code aspects of this agreement.

Respectfully,


Janet Gallagher
Manager, Inspections and Review Division

TEAM Group Systems Inc.



JANUARY 5, 2004

MEMORANDUM

TO WHOM IT MAY CONCERN

FROM: JUDITH L. SMITH, MANAGER
ENCINAL HOMEOWNERS ASSOCIATION

RE: ENCINAL UNIT 301
MELTON WEST OWNER

PURSUANT TO REGULATIONS OF THE ENCINAL CONDOMINIUM HOMEOWNERS ASSOCIATION, OWNER'S ATTEMPTING TO MAKE MODIFICATIONS TO THEIR UNIT MUST SEEK APPROVAL FROM THE BOARD OF DIRECTORS OF THE ASSOCIATION AND/OR THE TOTAL MEMBERSHIP OF THE ASSOCIATION.

THE DRAWINGS AND PLANS FOR THE MODIFICATIONS OF UNIT 301 AT ENCINAL CONDOMINIUMS, 1106 WEST 6TH STREET, AUSTIN, TEXAS 78703, WERE ORIGINALLY APPROVED BY THE BOARD OF DIRECTORS AND THE MEMBERSHIP OF THE ASSOCIATION ON JANUARY 26, 2002. THIS VOTE WAS UNANIMOUS.

ON JULY 30, 2002, THE BOARD OF DIRECTORS APPROVED CHANGES TO THE ORIGINAL DRAWINGS AND SPECIFICATIONS. AS OUTLINED IN THE DECLARATIONS, ON AUGUST 6, 2002, A LETTER WAS SENT TO ALL MEMBERS OF THE ASSOCIATION ADVISING OF THE CHANGES MADE TO THE PLANS PREVIOUSLY APPROVED. THE MEMBERS WERE GIVEN 30 DAYS TO RESPOND IN WRITING IF THERE WERE OBJECTIONS. THERE WERE NO OBJECTIONS FILED TO THE CHANGES AND THE CHANGES WERE APPROVED UNANIMOUSLY.

IN ALL, THE BOARD OF DIRECTORS AND THE ASSOCIATION REVIEWED THE PLANS AND CHANGES ON THREE DIFFERENT OCCASIONS. EACH TIME THERE WAS UNANIMOUS APPROVAL FOR THE PLANS AND MODIFICATIONS SUBMITTED.

The Encinal Condominium Owners Association Approved Building Modifications

The City Council should give serious consideration to the fact that the Encinal Condominium Owners Association (ECO) approved the exterior building modifications. Exterior modifications to Unit 301 *were approved unanimously* by the ECO on *three separate occasions over a two year period*.

The ECO *represents the interests of 22 property owners who are the most affected by this project*. Their units buffer and shield the proposed construction from neighboring properties. Their property values will be most affected by having Unit 301 rehabilitated and also would be the most affected by denying a height waiver. The ECO approved this project.

Unfortunately, a few property owners have voiced opposition to a height waiver:

1. Robert Floyd, 1106 W. 6th Street, Unit 103
2. Margaret Stephens, 1106 W. 6th Street, Unit 201
3. Martha Fitzwater, 1106 W. 6th Street, Unit 209

The majority of property owners have not opposed a height waiver:

4. Stroud Kelley, 1106 W. 6th Street, Unit 101
5. Stroud Kelley, 1106 W. 6th Street, Unit 102
6. Winn Wittman, 1106 W. 6th Street,, Unit 104
7. Tim Jarvis, 1106 W. 6th Street, Unit 105
8. Evelyn Pool, 1106 W. 6th Street, Unit 106
9. Denise Trevino, 1106 W. 6th Street, Unit 107
10. Lansing Bricknell, 1106 W. 6th Street, Unit 108
11. John McCray, 1106 W. 6th Street, Unit 202
12. Dennis Rea, 1106 W. 6th Street, Unit 203
13. James Innes, 1106 W. 6th Street, Unit 204
14. Thomas Campion, 1106 W. 6th Street, Unit 205
15. Austin Air Balancing, 1106 W. 6th Street, Inc., Unit 206
16. Becky Pestana, 1106 W. 6th Street, Unit 207
17. Douglas Marcella, 1106 W. 6th Street, Unit 208
18. Jeffrey Gorvetzian, 1106 W. 6th Street, Unit 210
19. Christopher Oakland, 1106 W. 6th Street, Unit 211
20. Christopher Oakland, 1106 W. 6th Street, Unit 212
21. Michael Murray, 1106 W. 6th Street, Unit 213
22. Melton West, 1106 W. 6th Street, Unit 301

Everyone at the Encinal is eager to see a resolution to this situation. Denying a waiver is not a solution. During the 16 months since construction stopped, no other feasible solutions have emerged.